

SEHC: Structural Options

SEHCSO 2: Government Expectations

What a Government should do and what a Government does are not always consistent and depends, of course, on who is saying what the Government should do.

Nonetheless, there is established international policy on how Governments should relate to co-operatives that has been adopted by the International Co-operative Alliance, the International Labor Organisation (ILO) and the United Nations (UN). Australia is a member of both the ILO and the UN.

Founded in 1895, the **International Co-operative Alliance** is an independent, non-governmental organisation which unites, represents and serves co-operatives. The ICA has 222 member organisations from 90 countries active in all sectors of the economy. Together these co-operatives represent more than 800 million individuals worldwide.

The **International Labor Organization** is an international organization located in Geneva, Switzerland, whose goal is to promote decent work for all men and women. There are 175 member countries of the ILO, represented by workers, employers and governments. It is the only international agency in which non-governmental sectors of society participate fully with government.

The **United Nations** is a global organization founded in 1944 to promote international cooperation and resolve international conflicts through peaceful means. Currently has 191 member countries. Decisions are made by a General Assembly and by a 15-member Security Council that has five permanent members and 10 rotating members.

The common view of the ICA, the ILO and the UN is that Governments should adopt policies and a legal framework that support co-operatives and are consistent with their nature and values. The institutional environment should provide for a rapid, simple and affordable registration process for co-operatives. Governments should promote the growth and viability of co-operatives by facilitating access to investment finance and credit, as well as to training, and should enter into partnerships with cooperatives where appropriate.

The legal structure of housing providers should not, therefore, influence Government policies and decisions about who could be a

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housing provider and, indeed, the policies and decisions, should accommodate the nature and values of co-operatives.¹

Nonetheless, Victorian Government assumptions and expectation are in themselves important in considering the future of SEHC.

Received wisdom by business, government and the community sectors appears to be that corporations law is the most appropriate legal structure for housing providers.² The ostensible basis for this prejudice towards Corporations Law appears to be the following:

1. Corporations Law offers a higher level of accountability.
2. Potential lenders, investors and development partners are themselves under corporations law and are more comfortable working with companies.
3. Corporations Law is the benchmark for good governance.
4. Corporations Law provides a legal structure for more serious providers.
5. Corporations Law provides the best structure for minimising legal and financial risk.

¹ United Nations Cooperatives at work, 2005 Read also: Promoting Co-operatives: A Guide to ILO Recommendation 193, Co-operative College for the Department of International Development, UK 2004

² Co-operatives are capable of being large, successful and accountable. The Western Australian based CBH Group stores, handles and markets grain. The WA harvest averages ten million tonnes annually, of which 95 per cent is exported, and represents up to 40 per cent of the nation's average annual production. The CBH Group is a leading grains industry organisation, marketing grain to over 20 export destinations and with a total storage capacity in excess of 16.5 million tonnes.

CBH is controlled by over 6,500 grower-shareholders, who plant and harvest grain grown across some 320,000 square kilometers that comprise the Western Australian grain belt. It has 750 staff and an annual turnover of A\$900 million. The Capricorn Society Ltd is also from WA. . is the largest independent automotive parts buying co-operative in the southern hemisphere. It acts as an intermediary by facilitating strategic partnerships between its members and suppliers. Members are typically proprietors of mechanical workshops, service stations and smash repairers. There are 9800 members – including members in New Zealand and South Africa. The co-operative has 130 employees and an annual turnover of A\$535 million. Murray Goulburn Co-operative Co Limited was established in 1950. It is Australia's largest manufacturer of dairy products and its milk intake is 35% of Australia's milk production. Its international business accounts for approximately 9% of the world dairy trade. Murray Goulburn has 3109 member shareholders and a A\$1.63 billion turnover. It exports to over 100 countries and is the largest container user in Port Melbourne, Victoria.

6. Corporations Law will facilitate the development of skill-based and expertise-based boards.
7. Community housing providers who are themselves involved in or have a background from the community services/welfare sector that has been corporatised are themselves more comfortable with Corporations Law.

An example of this Corporations Law prejudice is a study of seven non-government affordable housing models by AHURI where it is concluded: "although two agencies had been managed successfully to date as incorporated associations, to operate their development function at a larger scale they would benefit from the stronger governance principles and guidance provided under the Corporations Act. This view is shared by those agencies and they are presently investigating options for enhancing their governance."³

In Victoria the Office of Housing has directed Common Equity Housing Ltd to remove majority member control. As Common Equity Housing Ltd explains this: "Many of you in the CERC Program will know the Office of Housing is requiring CEHL increase the number of technical directors on the CEHL Board if we are to be eligible for further growth funds. This will mean technical directors will have a majority on the Board and requires a Constitution change. In February 2006, five forums will be held around the state for CERC's to discuss this issue, culminating in a Special Vote on the subject in March. Watch out for the dates and venues and try and get someone from your CERC along to hear the debate and make an informed decision on how to vote."

Of course, this requirement is inconsistent with co-operative values and principles.

Gapp Consulting Services has noted, however, that: "There may be a perception that corporation's law offers a higher level of accountability than association's legislation, but it is unclear whether this perception is borne out in reality."⁴

Whatever the reality of the assumptions about Corporations Law, that they are assumptions informing public policy is a reality in itself – that

³ Milligan et al A Practical Framework for Expanding Affordable Housing Services in Australia: Learning from Experience, AHURI, 2004, p 100 footnote 94

⁴ Gapp Consulting Services Pty Ltd Corporate Governance in Community Housing: Managing the challenges posed by growth, August 2004, p 11

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there is an assumption that corporations law provides a superior legal structure and that the Co-operatives Act 1996 provides an inferior legal structure. Based on current expectation and experience, a co-operative housing provider may not be acceptable in the long-term to the Victorian Government. The Office of Housing decision that members of Common Equity Housing Ltd should not be in a majority on the CEHL board is an explicit indication of this approach – not permissible if CEHL was a co-operative.

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